

219270

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Elizabeth B. Fleming, Chairman

Docket No. 2008-360-S

Happy Rabbit, LP on Behalf of Windridge Townhomes, Complainant/Appellant.
v.

Alpine Utilities, Incorporated Respondent.

NOTICE OF APPEAL

Happy Rabbit, LP on Behalf of Windridge Townhomes, appeals the July 17, 2009, Order No. 2009-496 and the September 18, 2009, Order No. 2009-653, both of Chairman Elizabeth B. Fleming. Complainant/Appellant received written notice of entry of Order No. 2009-653 Order on September 22, 2009.

September 22, 2009



Timothy F. Rogers
Richard L. Whitt
Jefferson D. Griffith, III
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, S.C. 29201
(803) 251-7442
Attorneys for Complainant/Appellant

Other Counsel of Record:

John M. S. Hoefer
Willoughby and Hoefer
930 Richland Street
Columbia, SC 29201

Attorney for Defendant/Respondent

COPY

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-360-S - ORDER NO. 2009-496

JULY 17, 2009

IN RE:	Happy Rabbit, LP on Behalf of Windridge Townhomes, Complainant, v Alpine Utilities, Incorporated, Respondent))))	ORDER RULING ON MOTION TO DISMISS AND PETITION FOR CLARIFICATION
--------	--	------------------	---

This matter comes before the Public Service Commission of South Carolina ("Commission") on Alpine Utilities, Incorporated's ("Alpine") Motion to Dismiss and the Office of Regulatory Staff's ("ORS") recommendation for dismissal without prejudice. Happy Rabbit, LP on behalf of Windridge Townhomes ("Happy Rabbit") opposes.

The crux of this case is the interpretation of 27-33-50 of the South Carolina Landlord/Tenant Act, even in regard to the proper application of Commission Regulation 103-533(3). While this Commission does not concede that it is without jurisdiction to address the issues raised by Happy Rabbit, the Office of Regulatory Staff's argument regarding judicial economy is a sound one. Certainly, the circuit courts of the state have jurisdiction to interpret this statute, and such a case is currently pending in the circuit court. Resolution of that case could resolve the matters in dispute between the parties. Even if it does not, at the very least, a ruling by the circuit court regarding its interpretation of 27-33-50 would be of assistance to this Commission in determining issues currently in the docket before it, including its jurisdiction over the complaint filed

COPY

here. Therefore, this Commission exercises its discretion for purposes of judicial economy, and dismisses the case without prejudice during the pendency of the circuit court case. If necessary, the Commission will subsequently entertain any request for the filing of new pleadings regarding any unresolved issues for which it is claimed to have jurisdiction.

Subsequent to this Commission's issuance of its April 22, 2009, Directive setting out the above ruling, Happy Rabbit filed a Petition for Clarification/Alternative Relief. In its Petition for Clarification, Happy Rabbit requests that the Commission Order in this matter declare that all discovery and pleadings filed by both parties be preserved for use "when the Docket is reactivated." We deny this request. The Happy Rabbit/Carolyn L. Cook matters have been dismissed without prejudice – not held in abeyance. As recognized in our Directive, a case is currently pending in the circuit court, resolution of which could resolve the matters in dispute between the parties. It is far from a certainty that this case will need to come back to the Commission, and if it does, there is no way to know now what issues may be required to be addressed. Only if necessary, we have said we would subsequently entertain any request for the filing of new pleadings regarding any unresolved issues for which this Commission is claimed to have jurisdiction. If the parties determine that discovery that has been exchanged between the parties is relevant to any issues that may in the future arise before us, the Commission will entertain any motions the parties may have at that time regarding recognition and preservation of the discovery provided in this present case.

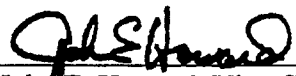
COPY

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman
(SEAL)

COPY

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-360-S - ORDER NO. 2009-653

SEPTEMBER 18, 2009

IN RE: Happy Rabbit, LP on Behalf of Windridge)	ORDER DENYING
Townhomes,)	HAPPY RABBIT, LP'S
)	PETITION FOR
Complainant,)	RECONSIDERATION
)	
vs.)	
)	
Alpine Utilities, Inc.,)	
)	
Respondent.)	

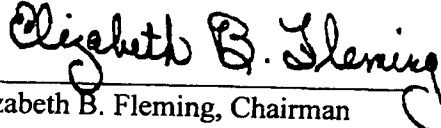
This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition for Reconsideration of Order No. 2009-496 filed by Happy Rabbit, LP on Behalf of Windridge Townhomes ("Happy Rabbit"). Because we find that Happy Rabbit has presented no new arguments in this matter, the Petition is denied.

As we have stated repeatedly in this Docket, this Commission does not concede that it is without jurisdiction to address the issues raised by Happy Rabbit; however, the Office of Regulatory Staff's argument regarding judicial economy is a sound one. Certainly, the circuit courts of the state have appropriate jurisdiction to interpret a provision of the Landlord Tenant Act, and such a case is currently pending in the circuit court. The ruling in our Order No. 2009-496 stands.


COPY

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman
(SEAL)

COPY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Elizabeth B. Fleming, Chairman

Docket No. 2008-360-S

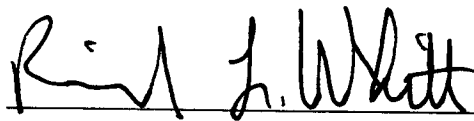
Happy Rabbit, LP on Behalf of Windridge Townhomes, Complainant/Appellant.
v.

Alpine Utilities, Incorporated Respondent.

PROOF OF SERVICE

I certify that I have caused to be served the Notice of Appeal, Proof of Service and copies of the Orders under appeal, on Alpine Utilities, Incorporated, by hand delivering a copy of them to their attorney of record, John M. S. Hoefer, at his office at 930 Richland Street, Columbia, S.C. 29201 and to the Chief Clerk of the Public Service Commission of South Carolina, the Honorable Charles Terreni, at his office at 101 Executive Center Drive, Suite 100, Columbia, S.C. 29210, on September 22, 2009.

September 22, 2009



Richard L. Whitt
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, S.C. 29201
(803) 251-7442

Attorney for Complainant/Appellant

COPY